IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 397/2003
(Rajasthan Leasing Pvt. Ltd. Vs. State of Rajasthan & Anr.)

Date of Order : 05/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Rajesh Joshi for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. A.K.Acharya for the non-petitioner No.2.

BY THE COURT:-

This criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) is directed against the order dated 17.4.2003 passed by Additional Sessions Judge No.3, Udaipur (for short 'the revisional court' hereianfter), whereby the revision petition filed by the non-petitioner No.2 against the order dated 18.11.2002 passed by Judicial Magistrate City (North) No.2, Udaipur (for short 'the trial court' hereinafter), was allowed and while setting aside the order passed by the trial court dated 18.11.2002 dismissing the application filed by non-petitioner No.2 seeking interim custody of the Truck bearing No.RJ-27-G-0982, the revisional court directed to release the vehicle in

question in favour of non-petitioner No.2 on the terms and conditions mentioned in the order.

The facts giving rise to the instant criminal misc. petition are that on a report lodged by non-petitioner No.2 Bheru Singh, the police seized the truck in question from the custody of the petitioner. The petitioner is engaged in the business of leasing and financing at Udaipur in the name and style "Rajasthan Leasing Pvt. Ltd." and has filed the instant petition through its Director Laxmilal Paliwal. The matter was investigated by the police and the police filed a negative final report which was accepted by the trial court stating therein that no such occurrence has taken place. It is not in dispute that the petitioner financed a sum of Rs.1,25,000/- to non-petitioner No.2 for the purchase of truck in question and the said truck was purchased by the non-petitioner No.2 on hire purchase basis by executing a hire purchase agreement in favour of the petitioner. In the agreement, there is a specific default clause that if the hirer fails to pay the monthly installments as agreed between the parties by an agreement, the financier will have a right to re-possess the vehicle.

It is not in dispute that the non-petitioner failed to pay the regular installments and defaulted in making regular payment of installments and therefore, in exercise of the default clause in the hire purchase agreement to re-possession, the

vehicle in question was re-possessed by the petitioner.

Before the trial court, the petitioner filed an application through its Director Laxmilal as also the non-petitioner No.2 seeking interim custody of the vehicle in question. The trial court held that the petitioner is entitled to possess the vehicle but in absence of complete particulars of the Director i.e. Father's name of Director Laxmilal was not mentioned in the application and therefore, dismissed the application filed by the petitioner for want of requisite document. However, the trial court held that the non-petitioner No.2 is not entitled to possess the vehicle.

The revisional court, on a revision petition filed by non-petitioner No.2, allowed the same and directed the vehicle to be released in favour of non-petitioner No.2 only on the ground that the registration of the said vehicle stands in the name of non-petitioner No.2.

Learned counsel for the petitioner submits that even after passing of the order by the revisional court, the non-petitioner No.2 has not paid any amount as instalment. He has relied on a decision of Hon'ble Supreme Court in Charanjit Singh Chadha Vs. Sudhir Mehra (2001) 7 SCC 417 wherein while considering the hire purchase agreement which is similarly worded held that hire purchase agreements are executory contracts under which the goods are let on hire and the hirer has

an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire purchase schemes gained in popularity, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would by the goods from the dealer and let them to the customer under hire purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customers. Under hire purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments.

In that case, the agreement executed by the parties was to the effect that the hirer would not become the owner of the property until he pays the entire instalments. In that case, the vehicle was re-possessed in terms of hire purchase agreement by the financier and a case was instituted for theft. The Apex Court held that the while case put forward by the

respondent complainant is to be appreciated in view of the stringent terms incorporated in the agreement. If the hirer himself has committed default by not paying the instalments and under the agreement the appellants have taken repossession of the vehicle, the respondent cannot have any grievance. The respondent cannot be permitted to say that the owner of the vehicle has committed theft of the vehicle or criminal breach of trust or cheating or criminal conspiracy as alleged in the complaint.

In the instant case, on a report lodged by non-petitioner, the matter was investigated by the police thoroughly and the police found that no such occurrence has taken place and filed negative final report which was accepted by the trial court. This shows that no matter is pending before the trial court. Keeping in view the decision of Hon'ble Supreme Court in Charanjeet Singh Chadha's case and the fact that the vehicle was seized from the possession of the petitioner and petitioner being not accused of an offence and under the hire purchase agreement has a right to re-possess the vehicle, in my view, the revisional court fell in error in releasing the vehicle in favour of non-petitioner No.2 only on the ground that the registration certificate stands in his name. In the circumstances, therefore, the order passed by the revisional court is liable to be set aside.

The criminal misc. Petition is, therefore, allowed. The

order passed by the revisional court dated 17.4.2003 is set aside. The non-petitioner No.2 is to surrender the vehicle in question before the trial court and the petitioner shall move a fresh application before the trial court for custody of the vehicle.

(H.R.PANWAR),J.

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